

## ***STRIKING A BALANCE BETWEEN SEDITION LAW AND RIGHT TO FREEDOM OF SPEECH & EXPRESSION***

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### **I. INTRODUCTION AND HISTORY**

Many a times two similar meaning phrases are confused to be one and they face consequences resulting out of each other. One such major confusion is faced when sedition While sedition is a crime which involves inciting commoners and citizens against the current government or authority, most of the times simple speech that educates the citizens about their rights and duties are given a tag of sedition<sup>1</sup> and are punished for it. In this article the author wants to distinguish the intricacies involved in both the acts and how they are wrongly used interchangeably by the media and authorities to shut the voices of citizens. Every subject has been given freedom to talk and categorical their views beneath Article 19(1)(a) of the Indian Constitution. However, this freedom isn't absolute and a few affordable restrictions are obligatory on freedom of speech and expression beneath Article 19(2). however once an individual will associate degree act by his words, signs or illustration that is command to be disrespectful towards the govt. of Republic of India, then such act is punishable beneath section 124-A of Indian legal code, 1860. offense is an offence that criminalizes speech that's regarded to be disloyal to or threatening to the state. In British Era, Section 124A wasn't a section of Indian penal law, 1860. however this Section was inserted into IPC by the IPC (Amendment) Act, 1870. By an changing the act of 1898, this clause was then replaced by Section 124A. in keeping with common law Era Law, beneath the previous IPC, "Exciting or making an attempt to excite feelings or disaffection was thought of as offense. "Sedition" has been delineate as unfaithfulness in action. the purpose of offense law is to induce discontent and rising, and fire up opposition to the govt. and convey the administration of justice into contempt. offense may be a crime against the society because it involves all those practices that lead to conduct disturbance within the state or to guide to war that contempt the sovereign and promotes public disorder. Gandhiji had written 3 'politically sensitive' articles in his weekly journal Young Republic of India, that was revealed from 1919 to 1932 in order that he was

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<sup>1</sup> "The Indian Penal Code defines sedition (Section 124A) as an offence committed when "any person by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India". Disaffection includes disloyalty and all feelings of enmity. However, comments without exciting or attempting to excite hatred, contempt or disaffection, will not constitute an offence under this section."

confined on the costs of misdemeanour. He was sentenced to a six-year jail term. Three charges were obligatory on him: Tampering with loyalty;

Shaking the manes and, Attempt to excite disaffection towards land Government.

He wrote the primary a part of his life story throughout his imprisonment- 'The Story of my Experiments with Truth'- and regarding the passive resistance movement in South Africa. He was free when 2 years as he was affected by redness . Bal Gangadhar Tilak was charged with misdemeanour on double, are: Firstly, his speeches that allegedly incited violence and resulted within the killings of 2 British Officers that he was charged with misdemeanour in 1897. He was guilty however got bail in 1898. Secondly, he was defensive the Indian revolutionaries and caught up immediate Swaraj or self-determination in his newspaper 'Kesari' that he was guilty beneath misdemeanour and sent to metropolis, Burma from 1908 to 1914.

## II. CONSTITUTIONAL INTERPRETATION OF SEDITION

The courts are categorical in stating that criticism of the govt. is integral for the functioning of democracy and each criticism of the govt. wouldn't be thought of as offense. the article of offense is known to having evoked discontent and struggle and fan the flames of opposition to the govt. by inciting the general public to rebellion. For examining whether or not a speech or words, etc. are seditious in nature, the important intent of these words, speech, etc. should be thought of. The Old Delhi judicature within the case of *Pankaj Butalia v. Central Board of Film Certification and Ors*<sup>2</sup>. reiterated the actual fact that whereas examining any offence below Section 124A, the intention with that the language of the seditious statement is created should be checked out holistically and fairly while not specializing in isolated passages. The Supreme Court within the case of *Balwant Singh and Ors v. State of Punjab*<sup>3</sup> was two-faced with a situation wherever the appellants before the Court on the day former Prime Minister (PM) Indira Nehru Gandhi was murdered had loud the slogans "Khalistan Zindabad, raj Karega Khalsa, and Hinduan Nun geographical area Chon Kadh Ke Chhadange, Hun Mauka Aya Hai rule Kayam Karan public prosecutor." Upon analyzing the prosecution proof on record it had been found that the appellants had solely loud those slogans one or two of times and also the slogans had not received any response from the other person. Had the appellants raised slogans with the intention to incite individuals or produce disorder, or had the slogans resulted in the other law and order drawback, Section 124A would are

<sup>2</sup> 2015 (151) DRJ 37

<sup>3</sup> (1995) 3 SCC 214

applicable. The metropolis tribunal in *Sanskar Marathe v State of Maharashtra and Ors*<sup>4</sup> examined whether or not mister. Assem Trivedi, a political draftsman and social activist, through his cartoons, had committed the offence of offense as through his cartoons, he had allegedly to unfold hate and disrespect against the govt.. The matter was laid-off once the State submitted an endeavour to issue pointers as a circular to police personnel across the state to make sure that when evaluating whether or not a speech, words, cartoons etc. would be seditious “(i) The words, signs or representations should bring the Government(Central or State) into hate or contempt or must cause or decide to cause disaffection, enmity or unfaithfulness to the govt. and also the words/signs/representation should even be an incitement to violence or must be supposed or tend to form public disorder or an affordable apprehension of public disorder”; “(ii) Words, signs or representations against politicians or public servants by themselves don't fall during this class unless the words/signs/representations show them as representative of the govt.”; (iii) “Comments expressing disapproval or criticism of the Government with a read to getting a amendment of state by lawful means that with none of the higher than aren't seditious below Section 124A”; “(iv) Obscenity or vulgarism by itself shouldn't be taken into consideration as an element or consideration for deciding whether or not a case falls at intervals the view of Section 124A of IPC, for they're lined below alternative sections of law;” “(v) A legal instrument in writing which supplies reasons addressing the same should be obtained from defender of the District followed at intervals fortnight by a legal opinion in writing from prosecuting officer of the State”. The Allahabad tribunal within the case of *Arun Jaitley v. State of U.P*<sup>5</sup> had an opportunity to look at whether or not a writing criticizing the judgment of the Supreme Court on National Judicial Appointment Commission<sup>6</sup> would quantity to offense or not. it had been control that for associate degree offence to be legitimate below Section 124A of the IPC, the words written or spoken would have to be compelled to qualify as having a “pernicious tendency of making public disorder or disturbance of law and order”.

### III. ARGUMENTS FOR AND AGAINST THE SEDITION LAW

Section 124A of the IPC has its feasibility in battling anti-national, proponent and terrorist components. It safeguards the electoral government from attempts to overthrow the govt with brutality and contraband propound that. The continuing existence of the govt established by law

<sup>4</sup> 2015 (2) RCR (Criminal) 351

<sup>5</sup> 2016 (1) ACR 890

<sup>6</sup> Senate Committee Legal and Constitutional Affairs Committee, Report on Provisions of the Anti Terrorism Bill (No 2) 2005, November 2005

is an important condition of the steadiness of the State. If contempt of court invitations penal action, contempt of state ought to additionally attract penalty. Many districts in numerous states face a Maoist insurrection and rebel teams nearly run a parallel administration. These teams brazenly advocate the overthrow of the authorities by revolution. Against this backdrop, the termination of Section 124A would be imprudent simply as a result of it's been incorrectly invoked in some extremely publicized cases. Section 124A could be a relic of colonial bequest and mismatched during a democracy. It's a constraint on the legitimate exercise of constitutionally secure freedom of speech and expression. Dissent and criticism of the govt are essential ingredients of strong speechmaking during a vivacious democracy. They ought to not be made as misdemeanour. Right to question, criticize and alter rulers is extremely basic to the concept of democracy. The British, who introduced misdemeanour to oppress Indians, have themselves abolished the law in their country. There's no reason, why mustn't Republic of India get rid of this section. The terms used underneath Section 124A like 'disaffection' are imprecise and subject to totally different interpretation to the whims and fancies of the work officers. IPC and Unlawful Activities Hindrance Act have provisions that punish "disrupting the general public order" or "overthrowing the govt with violence and hot means". These are sufficient for safeguarding the national integrity. There's no would like for Section 124A. The misdemeanour law is being abused as a tool to dun political dissent. A large and targeted govt discretion is constitutional into it which allows the blatant abuse. In 1979, Bharat legal the International Covenant on Civil and Political Rights (ICCPR), that sets forth internationally identified guidelines for the safeguarding of freedom of expression. However, misuse of misdemeanour and discretionary slapping of charges are inconsistent with India's international commitments.

#### **IV. SEDITION VS FREEDOM OF SPEECH**

Freedom of speech and expression is one amongst the foremost vital basic rights of a democracy. In India, this right has been enshrined beneath Article 19(1)(a) of the Constitution of Republic of India. Free speech permits a person to precise his or her aspirations, concepts and opinions and plays an participant role in achieving fulfilment. However, the term 'free' isn't absolute and affordable restrictions are obligatory on all basic rights. Sovereignty and integrity of Republic of India<sup>7</sup>, the safety of the State, friendly relations with foreign States, public order, decency or morality or in respect to contempt of court, defamation or incitement to associate offence, are the

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<sup>7</sup> the Report of the Press Commission 403 (1954)      the Report of the Press Laws Enquiry Committee 39 (1948)  
Beg, J., in *Ram Nandan v. The State of U.P.* 1959 All. Tiwari, "Law of Sedition in India," in *Essays on the Indian Penal Code* (1962).

affordable restrictions obligatory by the State to the correct to freedom of speech and expression beneath Article 19(2). Presently, the law of infringement beneath Section 124A has created massive conflict with the correct to freedom of speech and expression within the Constitutional jurisprudence of Republic of India. Sedition, because the Indian penal law defines, is an endeavor to bring hate or contempt, or disaffection against the govt. established by law in Republic of India. this may be done by words, signs or any quite visible illustration. Thus, if someone promotes hate or contempt towards the State is committing infringement. In *Romesh Thapper v. State*, it had been command that the bounds embarked on beneath Article 19(2) are terribly slim and demanding. In *Tara Singh v. State*, the East geographical region judicature command that section 124-A has no place during a new democratic setup and it curtailed the liberty of speech and expression. By virtue of the Constitution (First Amendment) Act, 1951 2 major changes were created to the liberty of speech and expression. First, a lot of grounds were other as restrictions to free speech and second, it obligatory that restrictions should be affordable. The question currently arises whether or not Article 19(2) and Section 124-A are compatible or contradictory to every different. There are 3 arguments that may be made: firstly, Section 124A ultra-vires the Constitution since it infringes article 19(1)(a) and isn't saved by the expression 'in the interest of public order.' secondly, Section 124A isn't void as a result of the expression 'in the interest of public order' encompasses a wider amplitude and is not solely confined to 'violence'. It should undermine the authority of the govt. by conveyance in hate or contempt or disaffection towards it. thirdly, In *Indramani Singh v. State of Manipur*, it had been command that Section 124A is partially void and partly valid. Exciting mere disaffection or making an attempt to cause disaffection is ultra vires, however the restriction beneath Article 19(2) to excite hate or contempt against the govt. established by law in Republic of India, is valid. The case of *Kedar Nath v. State of Bihar* lays down the essential ingredients of the current law of infringement. The apex court<sup>8</sup> whereas deciding the constitutional validity of Section 124A in given of Article 19(1)(a), aforementioned that "incitement of violence" is a vital ingredient to represent infringement. The apex court conjointly spoken a pre-legislative history of Republic of India and opposition close Article nineteen within the Constituent Assembly debates. infringement wasn't a legitimate restriction to freedom. However, out of the six grounds listed in Article 19(2), the court was of the read that 'security of the State' may well be one amongst the grounds to uphold the constitutional validity of Section 124A. The apex court conjointly ascertained that "strong words accustomed categorical condemnation of the measures of state with a read to their improvement or alteration by lawful

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<sup>8</sup> Misra, R. (1966). FREEDOM OF SPEECH AND THE LAW OF SEDITION IN INDIA. *Journal of the Indian Law Institute*, 8(1), 117-131.

means” isn't infringement. Further, the court ascertained that “citizen encompasses a right to mention or write no matter he likes regarding the govt., or its measures, by method of criticism or comment, see you later as he doesn't incite individuals to violence against the govt. established by law or with the intention of making public disorder.” it had been conjointly created necessary within the case of *R.M.D. Chamarbaugwalla v. Union of Republic of India*, that incitement of violence and disorder should even be there to represent infringement. There are infinite cases of infringement in Republic of India, each throughout pre-Independence times and post-Independence times. several of those cases have sparked political difference and led to protest marches against the detention of the perpetrators. In recent times, the foremost controversial infringement case was against mister Kanhaiya Kumar. it had been command that he was raising ‘anti-India’ slogans during a student rally on the field of Nehru University, Delhi. He did this in protest towards the execution of Afzal Guru, the person behind the 2001 Indian Parliament attack. Kumar was inactive on March 2, 2016, by the Delhi Police however videos were doctored and he was later free after disbursal 3 weeks in jail at the discretion of the Delhi judiciary. Another controversial infringement case was of a draftsman and a political activist, mister Aseem Trivedi, who was presupposed to have displayed ‘insulting and derogatory’ sketches that pictured Parliament as a commode and therefore the National Emblem during a negative light-weight. *Shreya Singhal v. Union of Republic of India* was a monumental case since it smitten down Section 66A of the IT Act, that was command contrary to the liberty of speech and expression. This was a landmark case about free speech in Republic of India. The court conjointly command that the restriction of ‘public order’ beneath Article 19(2) would solely apply to ‘incitement’ and not ‘advocacy.’ within the words of the SC, “The intelligible difference is evident – the net provides anyone a platform which needs little or no payment through that to air his views.” so on-line speech with none discretionary restrictions was the most outcome of this case. The NCRB knowledge<sup>9</sup> tell us that a complete of 179 individuals were inactive for infraction beneath Section 124A of the IPC throughout 2014-16. However, by the tip of 2016, the written record wasn't filed for nearly 80% of the cases and 90% infringement cases are lying unfinished within the court. In 2016, an attempt was completed for under three out of thirty four cases, with one conviction and 2 acquittals. In 2015, none were guilty and eleven were guiltless out of thirty eight against whom charges were framed. The question currently arises on why is that the conviction rate thus low. Mostly, it's attributable to political calming. Politicians relieve individuals suspect within the violence, mostly keeping in mind the vote-bank politics.

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<sup>9</sup> Maher, L. (2006). 'Modernising' the Crime of Sedition? *Labour History*, (90), 201-209.



In the case of *A.K. Gopalan v. State of Madras*, the Supreme Court observed: man, as a rational being, wishes to try and do several things, however in civil—society his wishes have to be compelled to be controlled, regulated and reconciled with the exercise of comparable wishes by different individuals... Liberty has, so to be restricted so as to be effectively possessed. The Supreme Court has in several judgements made public on what doesn't represent infringement –In the case of *Balwant Singh v. the State of Punjab*, it command that raising some lonesome slogans (Khalistan Zindabad) a few of times by two people failed to bring about to hate or contempt towards the govt. established by law in Republic of India nor did it give rise to feelings of enmity or hatred among completely different communities. Similarly, criticising the govt. or the Prime Minister doesn't quantity to infringement, as command in *Javed Habib v. the State of Delhi*. In the case of *Sanskar Marathe v. State of Maharashtra & Ors.* The court differentiated between robust criticism and feeling of unfaithfulness towards Republic of India. The court ascertained –“... unfaithfulness to Government established by law isn't a similar issue as commenting in robust terms upon the measures or acts of presidency, or its agencies, thus on ameliorate the condition of the individuals or to secure the cancellation or alteration of these acts or measures by lawful means that, that's to mention, while not exciting those feelings of enmity and infidelity that imply excitement to public disorder or the utilization of violence.” The Indian legal code (Amendment) Bill, 2011 recommended that solely those actions/words that directly led to ‘violence’ or ‘incited violence’ may only be tagged as seditious. The law of infringement is controversial and since it's an offence against the State, higher standards of proof should be applied for conviction. The Law Commission of Republic of India has prompt that Section 124-A should be scan in consonance with Article 19(2) of the Constitution every case must be scrutinised on the idea of facts and circumstances. The law of infringement could be a weapon to spot anyone who raises their voice against Republic of India and it should be perpetually updated in keeping with the worldwide context. each freedom comes with restrictions associated being disloyal to your own nation and stirring violence within the name of our own country is an act that's seditious in nature.

## **V. CONCLUSION**

India is that the largest democracy of the globe and therefore the right to free speech and expression is a vital ingredient of democracy. The expression or thought that's not in consonance with the policy of the govt. of the day shouldn't be thought of as offense. The Law Commission has justly same, "an expression of frustration over the state of affairs can't be treated as sedition". If the country isn't receptive positive criticism, there would be no distinction between the pre- and post-Independence eras. Of course, it's essential to guard national integrity. Given the judgment

and also the views of the govt. in favour of the law, it's unlikely that Section 124A are going to be scrapped shortly. However, the section mustn't be exploited as a tool to curb free speech. The SC caveat, given in Kedar Nath case, on prosecution below the law will check its misuse. There are bound essential components that are needed for a press release, words, cartoons etc. to be thought of as seditious, while not that an offence of offense can't be created out. It's been created clear through judicial interpretation over the past fifty years that Section 124A of the IPC is constitutional and is needed to confirm stability of the State and provides the govt. the tools to effectively combat anti-national, proponent terrorist components. However, there's a distinction of understanding between the principles set down by the Apex Court and actual implementation of Section 124A of the IPC that has seen several entail an change to the Section and terming Section 124A of the IPC as Athenian. However, given the main target on national security, we'd solely see the law on offense being created stronger. A clear-cut and precise delineation of the scope of freedom of speech and expression is important so as to avert the damaging consequences that will follow if the logic of the Kedar Nath case is carried one step more. The Supreme Court has upheld the constitutionality

of the law of offense while not addressing itself to the necessity of birth down a clear-cut principle to keep up a distinction between an incitement to action and an incitement to concepts. Each plan communicated has potentialities of incitement to action. In some cases the chance of incitement to action is also remote whereas in others it's going to be immediate. The judiciary, because the guardian of the basic rights, should perform the fragile task of drawing a line between the 2. The Supreme Court within the Kedar Nath case has not met the task squarely. On the contrary it's upheld a provision of law that penalizes support of bound forms of concepts while not process exactly the extent of proximity to the chance of eventful action. There's actually a

giant space in between the support of abstract concepts and also the speeches directly inciting to action. The Supreme Court call may give a convenient precedent to an intolerant government to suppress freedom of speech during this space on the pretext of chance or chance (even although remote) of disturbance to public order. The necessity for security within the society can not be carried up to now on fully over- shadow the freedom of speech in an exceedingly democratic society, wherever the govt. attracts its strength from the criticism by the individuals. Besides the legal arguments against the choice of the Supreme Court, the actual fact remains that the continuation of section 124- A in our system is an anachronism in sight of the democratic system ushered in by the Constitution. The section smacks of Associate in Nursing authoritarian rule and, as is well-known, was used extensively to muzzle the nationalist movement in Republic of India. Opinion within the country has been unanimous that section 124-A ought to be amended if not



repealed. the choice upholding the validity of the section runs counter to the favored sentiments by having given to a infamous provision of law a replacement lease of life. At the current stage of our social and legal development, it's an obligation of the law courts to adopt and change the previous system to the requirements of the new society<sup>10</sup>. within the method a number of the out-of-date rules, doctrines and establishments can ought to be changed and a few will have to be put aside. The task is tough and it's not stunning that the judgment within the Kedar Nath case doesn't return up to the expectations of the many. it's going to be hoped that the Supreme Court will re-examine at an early chance the scope of the liberty of speech and expression and can evolve a sound principle, adequately guaranteeing the freedom of thought and expression so the civil power might not get into the individual's field of opinion unless such an opinion and its expression have proximate tendency to have an effect on by expressed acts the peace and order within the society.

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<sup>10</sup> Philip Ruddock, 'Sedition: Why the fuss?', *The Age*, 14 November 2005; *The Sydney Morning Herald*, 14 November 2005.